

Opinion No. 250
Answered by Letter - Randolph

July 1, 1964



H. M. Hardwicke, M. D.
Acting Director
Division of Health
State Office Building
Jefferson City, Missouri

Dear Dr. Hardwicke:

This office has been asked to advise the Division of Health with respect to two questions arising under United States Public Law 88-164, 42 USC 2661, et seq., concerning mental retardation facilities construction.

This Federal statute requires that a single state agency must be designated by a state plan as the sole agency for the administration of the plan, or such plan must designate such agency as the sole agency for supervising the administration of the plan, and, further, to provide minimum standards for the maintenance and operation of the facilities which receive Federal aid thereunder, and that a State Advisory Council shall be designated, to include representatives of state agencies concerned with planning, operation or utilization of facilities for mentally retarded and community mental health centers and those government organizations concerned with education, employment, rehabilitation, welfare and health, including representatives of consumers of the services provided.

The first question that arises is whether Section 192.240, RSMo. 1959, designating the number and composition of the State Advisory Council, permits enlargement and inclusion of representatives required for the Advisory Council under Public Law 88-164, and, if not, can such a council be otherwise set up?

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A second question is, since the Division of Health has been designated as the state agency to receive Federal funds under Public Law 88-164, does the Division of Health have jurisdiction to establish and maintain minimum standards of operation and maintenance of facilities receiving aid under this Act, including hospitals operated by another state agency?

The views expressed in this letter are confined to the implementation of Title I of Public Law 88-164, concerning the construction of research centers and facilities for the mentally retarded and Title II thereof concerned with the construction of community mental health centers.

The Constitution of Missouri, Article III, Section 38(a), states:

" * * * Money or property may also be received from the United States and be redistributed together with public money of this state for any public purpose designated by the United States."

Public Law 88-164, Title I, Part C, Section 134 (42 USC 2674), covering research centers and facilities for the mentally retarded, states:

" * * * any State desiring to take advantage of this part shall submit a State plan for carrying out its purposes. Such State plan must--

"(1) designate a single State agency as the sole agency for the administration of the plan, or designate such agency as the sole agency for supervising the administration of the plan;"

Public Law 88-164, Title II, Section 204 (42 USC 2684), covering construction of community mental health centers, states:

" * * * any State desiring to take advantage of this title shall submit a State plan for carrying out its purposes. Such State plan must--

"(1) designate a single State agency as the sole agency for the administration of the plan, or designate such agency as the sole agency for supervising the administration of the plan;"

Both Sections 2674 and 2684 of Title 42 USC require that the state plans thereunder "provide for the designation of a State advisory council which shall include representatives of State agencies concerned with planning, operation, or utilization of facilities for the mentally retarded and of nongovernment organizations or groups concerned with education, employment, rehabilitation, welfare, and health, and including representatives of consumers of the services provided by such facilities".

Section 192.240, RSMo 1959, provides as follows:

"There is hereby created a State Advisory Council of seven members, who shall be appointed by the governor by and with the advice and consent of the senate. Each member of the state advisory council shall serve for a term of two years from and after his or her appointment and confirmation. Said advisory council shall be composed of citizens of this state who have resided in this state not less than five years immediately prior to their appointment and shall include at least two representatives of the consumers of hospital service, with the other members representing state government and non-government organizations in the state which are familiar with the needs of health services in urban and rural areas of the state. The members of this council may not receive any compensation other than for actual travel and subsistence when acting officially as members of the advisory council. The advisory council

shall be empowered to consult with the division of health on the official state plan for the construction of additional hospital and health center facilities. The director of health will approve such applications for federal assistance in the construction of hospitals and health centers as may be considered advisable after consultation with the advisory council."

It seems likely that the Governor could appoint to the State Advisory Council under Section 192.240 all those categories of persons described in the above quoted language in the Federal Act. That is to say, "members representing state government and non-government organizations in the state which are familiar with the needs of health services in urban and rural areas of the state" (quoted from the State statute) could very well be "representatives of State agencies concerned with planning, operation, or utilization of facilities for the mentally retarded and of nongovernment organizations or groups concerned with education, employment, rehabilitation, welfare, and health" (quoted from the Federal Act).

Likewise, "at least two representatives of the consumers of hospital service" (from the State statute) could include "representatives of consumers of the services provided by such facilities" (from the Federal Act).

However, the fact would have to be established that the present State Advisory Council, as presently constituted or as modified by the Governor by appointments and removals, actually conforms to the requirements of the advisory councils described in Title I and Title II of Public Law 88-164. A letter from the Governor to the effect that the council includes members of the types described would be sufficient.

On the matter of the authority of the Division of Health in the premises, we quote Section 192.025, RSMo. 1959:

"The division of health of the state department of public health and welfare is hereby designated the official agency of the state of Missouri to

receive federal funds for health purposes. The division shall comply with the acts of congress and with any rules and conditions made by any federal agency in regard to the use and distribution of such funds. Such funds shall be deposited in the state treasury and kept in such separately designated funds as may be required to carry out the purposes for which the federal grants are made. Disbursements of such funds from the treasury shall be made on warrants duly issued on requisitions of the division. The general assembly shall appropriate such funds to the use of the division for such purposes."

Section 192.250, RSMo. 1959, reads:

"The division of health of the department of public health and welfare is hereby designated the official state agency to receive any and all federal and other grants and aids for making a survey and for the construction of hospitals and health centers, provided, that private grants and aids to private hospitals, health centers and units in this state, by will, deed or gift shall vest in such private institutions under the terms and provisions of such will, deed or gift and the division of health of the department of public health and welfare shall have no right, title, interest or control over grants and aids to private hospitals so granted, unless granted in said will, deed or gift. It shall be empowered to receive any and all such grants and aids under the terms of such grants and aids and to pay them out under any and all provisions as may be attached to such grants and aids. It shall be authorized to render such reports as may be required under any and all grants and aids;

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provide such minimum standards for maintenance and operation of hospitals and health centers as may be required under the terms of such grants and aids; and to require compliance with such standards in the case of hospitals and health centers which shall have received such grants and aids." (Emphasis added)

Section 192.250 is broad enough to include cooperation with the Federal authorities and conformity with Public Law 88-164, including Federal requirements of minimum standards of operation and maintenance of facilities receiving aid under the Mental Retardation Facilities Construction Program, regardless of whether such facilities are operated by the Division of Health, the Division of Mental Diseases, or any other public or private agency.

This office advises that the State Advisory Council conforms to the requirements of Public Law 88-164.

We further advise that the Division of Health, as the State agency implementing Public Law 88-164, has jurisdiction to establish and maintain minimum standards of operation and maintenance of facilities receiving aid under that act, including hospitals operated by other state agencies.

Very truly yours,

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Attorney General